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NSC INTERAGENCY TASK FORCE ON THE LAW OF THE SEA

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MEMORANDUM

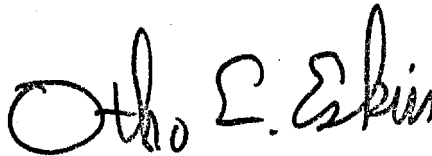
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TO : Members of the LOS Executive Group

SUBJECT : Testimony Before the Ad Hoc Select Committee
on the Outer Continental Shelf

Attached for clearance is draft testimony before the
Ad Hoc Select Committee on the Outer Continental Shelf on
November 14, 1975.

Please give your clearance to Peter Bernhardt (632-9616)
by c.o.b. Tuesday, November 11.



Otho E. Eskin
Staff Director

Attachment:

As stated.

State Dept. review completed

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TESTIMONY OF
BERNARD H. OXMAN
U.S. DEPARTMENT OF STATE
BEFORE THE AD HOC SELECT COMMITTEE
ON THE OUTER CONTINENTAL SHELF
THURSDAY, NOVEMBER 13, 1975

Dear Mr. Chairman:

I am Bernard H. Oxman, Assistant Legal Adviser for Oceans, Environmental and Scientific Affairs, Department of State, and Vice Chairman of the National Security Council Interagency Task Force on the Law of the Sea. In these capacities, I served as Deputy United States Representative to the Third United Nations Conference on the Law of the Sea, and represented the United States in the Second Committee on that Conference, which is concerned among other things with the economic zone and the continental shelf. It is a pleasure to be here today to testify on developments in the Third United Nations Conference on the Law of the Sea as they may relate to the work of this Committee with respect to the Outer Continental Shelf Lands Act.

It is widely recognized that the doctrine of the continental shelf in international law was originated by the United States in the 1945 Truman Proclamation on the Continental Shelf. That proclamation was issued after consultation with foreign states, and other concerned States acquiesced in the United States' position. To govern the administration of the hydrocarbon and mineral resources

of the Outer Continental Shelf, Congress passed the Outer Continental Shelf Lands Act in 1953.

The legal concept of the Continental Shelf quickly gained widespread international acceptance. The 1958 United Nations Conference on the Law of the Sea adopted four international Conventions on the Law of the Sea, including the Convention on the Continental Shelf. This Convention was ratified by the United States with the advice and consent of the Senate, and entered into force on June 10, 1964.

The present Law of the Sea negotiations grew out of a number of factors. For example, agreement was not reached on the maximum permissible breadth of the territorial sea. A second conference held in 1960 on this issue also failed to reach agreement.

Throughout the next decade, it became increasingly apparent that the four 1958 Conventions had not completely succeeded in achieving the adherence and respect of all nations on all issues. Disrespect for established rights in the oceans increased, in particular due to the absence of a universally agreed maximum limit for the territorial sea. Dissatisfaction with traditional rules of law also grew, in particular with respect to the protection of the interests of coastal fishermen. The advance of technology and increased sensitivity to environmental problems posed new issues not fully considered in 1958.

Accordingly, with United States support, the United Nations decided to convene a new comprehensive conference on the Law of the Sea. The Conference held its first substantive session in Caracas in the Summer of 1974, and its second substantive session in Geneva in the Spring of 1975. The Administration was pleased that members of Congress and their staffs attended both sessions. The next session of the Conference will be held in the Spring of 1976 in New York.

One of the most important results of the Geneva session of the Conference was the preparation of an Informal Single Negotiating Text covering all the issues before the Conference. The texts were prepared by the Chairman of the relevant committees on their own responsibility. Accordingly, they do not represent formal Conference agreement. However, it is important to bear in mind that negotiations had been underway for many years on many of the issues dealt with in the text. Particularly in the Second Committee, the general outline of the text does reflect an emerging consensus in the Conference. The main elements of the Committee 2 text are as follows:

- a. A maximum permissible breadth of 12 nautical miles for the territorial sea.
- b. Unimpeded passage through and over straits used for international navigation.

c. Beyond the territorial sea, an economic zone extending 200 nautical miles from shore.

In that zone, the Coastal State would have "sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether renewable ^{or} and non-renewable, of the seabed and subsoil and the superadjacent waters." The Single Text also provides for separate continental shelf jurisdiction. Using language identical to that contained in the existing Convention on the Continental Shelf, Article 63 provides that the "coastal State exercise over the continental shelf sovereign rights for the purpose of exploring and exploiting its natural resources," and confirms that these rights are "exclusive." Article 62 defines the continental shelf to include not only the seabed and subsoil within 200 miles of the coast, but, where the continental margin extends beyond the limit, the seabed and subsoil of the continental margin as well.

At the time the Single Negotiating Text was being prepared, negotiations were underway to develop a precise definition of the outer boundary of the continental margin. These negotiations are continuing, and there will be a meeting among a number of interested States in December to address this question, among others.

There is a clear consensus in the negotiations for a package agreement that includes a 200-mile economic zone, including coastal State exclusive sovereign rights over the natural resources of the seabed and subsoil in that

zone. There is disagreement on whether these rights should include areas of the continental margin that extend beyond 200 miles. Some States with relatively narrow continental margins feel that a uniform 200 mile limit is the most equitable solution. Other States have argued that the entire continental margin represents a natural prolongation of the land of the coastal State. These States therefore maintain that coastal State sovereign rights with respect to the seabed and subsoil should extend beyond 200 miles where the continental margin extends beyond that limit. There are some areas off the coast of the United States where the continental margin does extend beyond 200 miles, although our percentage of the global total of continental margin beyond 200 miles is quite small.

In an effort to achieve a satisfactory accommodation of this issue, the United States proposed that coastal State sovereign rights over the natural resources of the seabed and subsoil extend beyond 200 nautical miles where the continental margin extends beyond that limit, but that the coastal State should be obliged to contribute a portion of the revenue of mineral exploitation in the area beyond 200 miles to the international community. While opinions still remain divided on this issue, many key Conference leaders believe that the United States' approach represents the basis for the broadest possible accommodation on the issue. This approach was adopted by the Chairman of Committee 2 in the Single Negotiating Text.

One important consequence of the exclusive sovereign rights of the coastal State over the exploration and exploitation of the natural resources of the seabed and subsoil is the right of the coastal State to establish conditions for such exploration and exploitation. These include conditions and regulations for environmental protection, such as those now imposed by the United States and by many other countries. We strongly support the continuation of this right of the coastal State to set pollution standards for exploration and exploitation that are as high as the coastal State desires. This right is widely supported by many other countries, and is preserved by the Single Negotiating Text. Nevertheless, while we believe that the coastal State should have the right to fix standards which are as high as it chooses, we also believe that there should be an international minimum which all coastal States should meet. We are pleased that the Single Negotiating Text reflects this point of view. Both Article 68 of the Committee 2 text and Article 17 of the Committee 3 text on protection and preservation of the marine environment, while confirming the right of the coastal State to establish environmental measures for exploitation and exploration, require adherence to a minimum international level to be elaborated. We probably cannot expect the international minimum to be as stringent and comprehensive as the regulations we may maintain, but at least we will have the assurance that all coastal States are taking some measures. Under no circumstances, however, are we proposing

to yield the right of coastal States to fix environmental measures for exploration and exploitation which are higher than the international minimums.

The question naturally arises of whether it would be necessary or advisable to amend the Outer Continental Shelf Lands Act in the light of the Law of the Sea negotiations. We believe it would be best to await the final outcome of these negotiations for at least two reasons. First, we cannot be certain at this time of the precise provisions of the Treaty. Second, we prefer to avoid any action at this time which could prejudice the options open to the United States in the event that negotiations do not succeed.

The existing definition of the Outer Continental Shelf in the Outer Continental Shelf Lands Act is a flexible one. Indeed, that statute was written before the United States became a party to the Continental Shelf Convention and no consequent revision of the Outer Continental Shelf Lands Act was needed to accommodate that Convention. While a new treaty may require some new legislation, the existing Act is compatible with the existing Convention on the Continental Shelf (see e.g., U.S. v. Ray 423 Fed. 2d 16, 21) and with the general outlines of the emerging consensus in the Law of the Sea Conference. This is true because the definition of the Outer Continental Shelf in the Outer Continental Shelf Lands Act specifies no fixed outer limit, but rather refers to the seabed and subsoil which appertain to the United States and are subject to its jurisdiction and control. We believe that with negotiations regarding a precise outer limit now

entering an advanced stage, it would be preferable to leave the definition in the Outer Continental Shelf Lands Act as it stands.

Mr. Chairman, in making this observation, we wish to emphasize that the current negotiations on the Law of the Sea are proceeding on the assumption that there is, beyond areas of coastal State resources jurisdiction, an area of the deep seabed open to use by all States without discrimination. The principal resources of interest in this area are manganese nodules lying at or near the surface of the seabeds at great depths. Many of the most promising deposits of these nodules are closer to the coast of foreign States than they are to the United States. It is the view of the United States that under existing international law our nationals are free to exploit deep seabed resources pursuant to the principle of the freedom of the high seas. It is also our view that an internationally agreed regime for mining deep seabed resources that guarantees access to all States and their nationals under commonly agreed conditions would be in the interests of all concerned. Nevertheless, this aspect of the negotiation - that is, the exploitation of seabed resources seaward of the economic zone and the continental shelf - has proven to be most difficult. Accordingly, in addition to the provisions of the treaty regarding the precise outer limit of the continental shelf, we believe the United States should await the outcome of the negotiations with respect to deep seabed resources before indicating a definitive view of what its position would be in the event the negotiations do not succeed.

Mr. Chairman, once again let me state that I appreciate the opportunity to be present today, and hope that my statement will be of some use to this Committee in its work. If there are any questions on the matters I have addressed, I would of course be happy to respond.

Thank you, Mr. Chairman.